In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 286

UNITED STATES OF AMERICA, APPELLANT

v.

DIEBOLD, INCORPORATED

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO APPELLEE'S MOTION TO UNSEAL SEALED PAPERS AND MAKE THEM PART OF THE OPEN RECORD ON APPEAL

The United States agrees with appellee that the Neisser affidavit and attachments, which the district court ordered sealed, include material which is relevant to the issues on appeal and that this material was considered by the district court in deciding the case. The United States therefore has no objection to the motion to unseal the sealed papers and make them part of the open record on appeal.

However, at this posture of the case, when counsel for the parties are designating the record for print-

ing—and before the arguments in this Court have been fully projected—no one knows with certainty whether or not it will be necessary to rely on all those portions of the sealed papers which the Mosler Safe Company has wished to keep from public disclosure.[1] Accordingly, if Mosler still objects to disclosure, we suggest the following alternative method of preventing or minimizing unnecessary disclosure:

1. The Clerk will not at this time print any portion of the sealed papers.

2. Counsel for the parties shall have unrestricted access to the papers in the Clerk's office.

3. Where counsel deem it necessary, they shall be free to refer in briefs (or in oral argument) to any material included in the sealed papers.

4. Within 5 days after appellee's brief is received by appellant, the parties shall designate the portions of the sealed papers they wish to have printed as part of the record and the Clerk shall immediately cause those portions to be printed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

DECEMBER 1961

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[1] Although the Mosler Safe Company is not a party to this litigation, it is being served with a copy of this memorandum (see the Motion, p. 3, n. 1).

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